

REMARKS/ARGUMENTS

Claims 1-5, 7-9, 15 and 16 are pending herein, claims 1 and 16 being independent and claims 10-14 having been withdrawn from consideration. By the amendments above, claim 1 has been amended solely to recite expressly what was previously implicit in the claim, namely that the "axis" referred to therein is a *central* axis of the container. It is believed that this amendment is cosmetic only, and has introduced no new matter.

In the pending Final Office Action, the Examiner rejected claims 1-3, 7-9 and 15 under 35 U.S.C. § 103(a) as allegedly obvious over United States Patent No. 4,673,814 (Schroeder, *et al.*); and claims 4 and 5 as obvious over Schroeder, *et al.* in view of United States Patent No. 4,831,233 (Gordon). Claim 16 has been allowed.

Applicants would like to thank the Examiner and her Supervisor for the courtesy extended during their telephone interview of August 11, 2008. During the telephone interview, the limitation "axis" of claim 1 was discussed, and, although no agreement was reached on the claims, it was agreed that adding the term "central" to describe the "axis" would distinguish the claims over the applied reference. The Examiner took no position, however, on whether the claims would be allowable pending a further search. The Examiner explained her position that an "axis" could be any line drawn through space, and so the term "axis" alone did not include any meaning of the "axis" being located centrally to the body so described. On page 3 of the Final Office Action, the Examiner illustrated this position with respect to an "axis" inserted into a Figure of the Schroeder reference, as further explained in the Interview Summary of August 13, 2008.

In view of that discussion, therefore, applicants have amended claim 1 to recite expressly that the axis is a "central" axis, and so it is believed that the pending rejections have been overcome.

It is submitted, furthermore, that the term "axis" should have been construed to mean a "central axis" so that this amendment does not require a further search.

The words of the claim must be given their plain meaning unless the plain meaning is inconsistent with the specification. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). MPEP § 2111.01. It is respectfully submitted that one of ordinary skill in the art would understand that the plain meaning of the term "axis" necessarily includes the meaning that the "axis" is a "central axis" as now explicitly claimed so that the claims should have been so construed in the Final Office Action.

The plain meaning of the term "axis" requires that some sort of symmetry exists about the "axis." See, for example, the following meanings from two on-line dictionaries:

AXIS

"A line about which a three-dimensional body or figure is symmetrical.,"
Dictionary.com, defn. 2.b.

"A straight line about which a body or geometric object rotates or may be conceived to rotate." *American Heritage Dictionary*, defn. 1.

In both dictionary definitions, indeed in all common English definitions that one of ordinary skill may use for understanding the plain meaning of the term "axis", the key to what makes an "axis" an "axis", rather than simply a "line", is the notion that a body with an "axis" is *symmetrical* about that axis. Thus, an "axis" would not be understood by one of ordinary skill in the art to mean *any* line that may be drawn through the device. Rather, one of ordinary skill would understand that the "axis" of the device is the imaginary line about which the device is symmetrical.

Armed with this general understanding of the common English usage of the term "axis", one of ordinary skill would look to the teachings of the specification herein to determine if the inventor used the term "axis" in a fashion inconsistent with its plain meaning. To see what meaning is conveyed by the specification, one must read the specification *as a whole*, including the drawings. The figures show a dot-dash line throughout, which is clearly the *central* axis of the device. Body 1 is defined as "cylindrical" (para. [0100]) and a cylinder is defined by its axis. Body 1 also includes an "axial wall 12" which is shown as parallel to the dot-dash line, *i.e.*, the "axis" of body 1. No meaning other than a "central axis" could therefore be ascribed to the term "axis", and that is how one of ordinary skill in the art would interpret it. Thus, the amendment above, making explicit what was already implicit in the claim, adds no meaningful limitation thereto so that no further search is required by this amendment.

There being no further grounds for rejection and/or objection, early and favorable action is respectfully solicited.

It is believed that no fees or charges are required at this time in connection with the present application. However, if any fees or charges are required at this time, they may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

Respectfully submitted,
COHEN PONTANI LIEBERMAN & PAVANE LLP

By



Roger S. Thompson
Reg. No. 29,594
551 Fifth Avenue, Suite 1210
New York, New York 10176
(212) 687-2770

Dated: October 21, 2008